(1)

Supreme Court, U.S.
FILED

03 514 AUG 4 2003

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE ELVIS MOYER,
Appellant - Petitioner

v.

SMURFIT-STONE CONTAINER CORPORATION
Appellee Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE MIDDLE DISTRICT

PETITION FOR WRIT OF CERTIORARI

GEORGE ELVIS MOYER
1444 WOLF ISLAND ROAD
REIDSVILLE N.C. 27320
(336) 339-3862
Pro se

43 pp

QUESTIONS PRESENTED

1. Whether the US. Court of Appeals for the Fourth Circuit properly agreed that Plaintiff did not apply for the position of Second Pressman when Smurfit-Stone Container Corporation has a line of progression that automatically gives the vacant position to the most senior person in that Department?

PARTIES TO THE PROCEEDINGS

Petitioners are George Elvis Moyer, The Respondents are Smurfit-Stone Container Corporation. All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENT iii

TABLE OF AUTHORITIES CITE..... iv

OPINIONS BELOW..... 1

JURISDICTION..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 4

CONCLUSION..... 7

TABLE OF AUTHORITIES

CASES	PAGE NUMBER
Civil Right Act of 1964	2,3
Carter v. Bell	3,4,6

STATUTES AND RULES

28 USC section 1254	2
Title 42 USC	1,2
33 F. 3d 450, 458 (4th Cir. 1994)	4

OTHER : Agreement by and between Smurfit-Stone Container Corporation and the Graphic Communication Union Local 465-S

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the U.S. Court of Appeals affirming the decision of the District Court, Order of the U.S. Court of Appeals denying Petition for a hearing in the, U.S. District Court's Order to grant the defendant's a Directed Verdict and thus dismissing the Petitioner's claims of *Title VII of the Act known as " The Civil Rights Act of 1964, "42 USC section 200e. Et. Seq. providing for injunctive and other relief against racial discrimination in employment.* The suit also is authorized under *Title 42 USC. Section 1981 and 1983* and the United States Constitution more particularly the Fifth and Fourteenth Amendments thereto.

OPINIONS BELOW

This is a case from Federal Court:

The Opinion of the United States Court of appeals at Appendix 1-2 to the petition and is unpublished.

The Opinion of the United States District Court appears at Appendix 3-10 to the petition and is unpublished. Filed Nov. 21, 2002.

United States District Court of North Carolina judgment dated Nov. 21, 2003. Appendix 26.

JURISDICTION

The date on which the U.S. Court of Appeals decided against my case was on
May 6, 2003.

Fourteen days after, The U.S. Court of Appeals on the following date: May 20, 2003 sent an order denying rehearing of Appellant - Petitioner case.

The jurisdiction of this court is invoked under ***28 U.S.C. section 1254(1).***

No petition for rehearing was filed in my case. The jurisdiction of this court is invoked under 28 U.S.C. section 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Act known as " The Civil Rights Act of 1964, "42 USC section 200e. Et. Seq. providing for injunctive and other relief against racial discrimination in employment. The suit also is authorized under Title 42 USC. Section 1981 and 1983 and the United States Constitution more particularly the Fifth and Fourteenth Amendments thereto

STATEMENT OF THE CASE INTRODUCTION

Plaintiff, George E. Moyer (a black male), has been an employee since Oct. 2, 1987 of Smurfit-Stone Container Corporation, in Greensboro N. C. On or around February 16, 1998 an employee who was working for a temporary agency at Smurfit-Stone Corporation as a temporary employee was hired as a full-time employee. The temporary employee's name was Kevin Wells (a white male) and the full time position in which he was hired, was called a 2nd Press Operator IP3 job.. After an attempt to resolve my complaint that Wells should not have been selected for the position of 2nd Pressman IP3 with Smurfit-Stone Corporation, I filed a complaint with the Equal Employment Opportunity Commission. The EEOC had made the following determination:

"Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations

of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge." (Appendix 21-22)

Next, I filed a complaint with the U.S. District Court in Greensboro, North Carolina under Title VII of the Civil Rights Act of 1964, as amended. Defendant filed a Motion for Summary Judgment and District Court Judge Osteen granted the motion for the following reason:

"Thus, Plaintiff has failed to offer competent evidence on the second essential element of the Carter test.

This second element of the Carter v. Bell, 33 F.3d 450, 458 (4th Cir. 1994) consist

of whether [Plaintiff] applied for the position in question. Also, Plaintiff believes and has argued on several occasions that he has offered competent evidence on the second essential element. More so, this part of the decision of the District Court is what is at issue. And, this was one of the

reasons for his appeal to the Fourth Circuit Court of Appeals. Plaintiff says that Judge Osteen is wrong. Plaintiff files this request for Certiorari because **the District Court has decided an important question of federal law that has not been, but should be, settled by this Court**. . This will be explained in my argument.

REASONS FOR GRANTING THE WRIT

1. The Plaintiff did in fact established competent evidence on the second essential element of the Carter test in *Carter v. Bell*, 33 F.3d 450, 458 (4th Cir. 1994). The second test asks whether Plaintiff applied for the position in question. The question, which should be asked in the mind of the Court, is "What constitutes applying for the position." Ordinary applying for a position startes by filling out an employment application for the position in question. At Smurfit-Stone Container Corporation while under the Union Contract, a

vacant position is applied for by either signing a "bid sheet" or when no bid sheet is posted, the department in which the vacancy arise, fills the position with the most senior employee in that department. [Unless unusual circumstances arise via the union grievance]. Printing Dept. bottom to top line of progression starts as such: **Sheeter / Feeder Operator / 2nd Press Operator / and Press Operator.** (Appendix 15-16.) If at any time there is a permanent vacancy to be filled in a job, or not in job, in the line of progression that job should be posted. (Appendix 11.) **One of Petitioner augments** was that Smurfit-Stone never posted the Bid Sheet up for the vacant job of the 2nd press Operator. The other way to move up into a vacant job is if you are in the line of progression, then you automatic move up to the next job by seniority. (Appendix 11.) **Another one of Petitioners augments** was that I had more seniority, than any one else in that Department, and was the next one to move up, by the line of progression, and

had been performing the 2nd Press job for over 6 months. I was automatic moved up into the 2nd Press Operator job, by the line of progression and seniority. But I still had to sign the over-ride sheet to get my pay. I asked my Supervisor Mark Grubbs, when he was going to put me in that position. He said George Holtz makes that decision. I was not classified as a 2nd Press Operator, but was doing the job over 6 months. Around Feb. 98, Smurfit-Stone hired Kevin Wells into the 2nd Press Operator position.

There are only three ways of filling new jobs.

1. Through the line of progression, under progression training. (Appendix. 11&14.)

2. In a job classification not in the line of progression. (Appendix. 11(a).

3. If no one signs the bid sheet, the Company is free to fill such jobs. (Appendix. 11(e).

Judge Osteen mistook my words into believing that I said that I didn't get the job because they did not put up a bid

sheet. I was trying to help him to understand, how the process works. The line of progression is how everybody gets and expects to move up into a new job. Job advancement has been through the line of progression for over 50 years.

In the Petitioner writings to Judge Osteen I said that no mater how you look at Smurfit-Stone actions, they had 3 ways to fill and opening by the Collective Bargaining Agreement between Smurfit-Stone Container Corporation and Graphic Communications Union Local 465-S, and only one could be right. They chose to hire from out side, thus Discriminating against George Elvis Moyer. All this information was given to the District Court. Carter v. Bell talks about an ordinary position and not a position governed by a union and most importantly a union governed by Local 465-S. Therefore, this is where the District Court by and thru Judge Osteen and the Fourth Circuit Court of Appeals by affirming the lower Court decision has decided an important question of federal law that has not been, but should be,

settled by this Court. The Seniority List which is Appendix 18 herein incorporated shows that John W. Means has more senority than G. E. Moyer. This would be the case if Mr. Means were not issued a letter, which is herein incorporated as Appendix . 18 and dated October 2, 1996 which states "...Disqualification to utility will also freeze your progression at that level..." Mr. Means requested to be disqualified as 1st Press Operator and chose to have his line of progression froze which pushed me up the line of progression for the position in question.

Next, I signed an affidavit for EEOC which is herein incorporated as Appendix 19-21. This affidavit tells when an opening is available; the most senior person gets the position in question. The latter part of this statement the counsel for defendant failed to submit.

CONCLUSION

For the ongoing reasons, of proof of Dock laments, facts, and Union Law. that the
Plaintiff presented, with more that a reasonable doubt. And for the here say of the Defendant with no stable proof. Plaintiff has already proved his Prima Facie in the Courts Order Dated Aug. 1, 2001. (Appendix I pg. 9-10) Defendant showed little evidence, and was extremely vague with no Proof, also due to the fact, that the Plaintiff
had the **Preponderance of evidence**. There's no doubt that the Plaintiff would have proved his case beyond a reason of doubt, in addition Plaintiff had over 50 wittness that would have testified in his behalf. And also; Kelvin Wells the Respondent witness was going to testify for the Union & Petitioner, as to the line of progression and how they Discriminate against Black people of color. There was a video made for proof, and it was turned in to the District Court in Greensboro N.C. along with a typed version of the video, signed by the Petitioner (George E. Moyer.)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George Elvis Moyer — Date: August 2, 2003
Pro se

George Elvis Moyer — Date: 10/6/03
Pro se

INDEX TO APPENDICES

APPENDIX 1-2 U. S Fourth Circuit Court of Appeals decision dated :May 6, 2003

APPENDIX 3-10 U.S. District Court of N.C. opinion dated Nov. 21, 2003

APPENDIX 11-12 Job Bidding Process

APPENDIX 12-16 Agreement by and between Smurfit-Stone & **G. C. Union 465-S**

APPENDIX 17 Seniority and Classification List

APPENDIX 18 John Means Disqualification

APPENDIX 19-21 George Moyer, Affidavit

APPENDIX 21-22 Notice of Suit Rights

APPENDIX 23-25 Memorandum Opinion and Order/ Judge Osteen; dated 7-1-01

APPENDIX 26 U. S. District Court of N.C. judgment dated Nov. 21, 2003

Appendix Separation Sheet

Appendix: 1-26

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 03-1022

GEORGE ELVIS MOYER,

Plaintiff - Appellant,

Verses

SMURFIT-STONE CONTAINER CORPORATION,

Defendant - Appellee,

Appeal from the United States District Court for the Middle District of North Carolina, at Dirham. William L. Osteen, District Judge. (CA-00-581-1)

Submitted: April 18, 2003 Decided: May 6, 2003

Before WILKINSON, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

George Elvis Moyer, Appellant Pro Se. Fred Thurman Hamlet, Sr., Greensboro, North Carolina, For Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

George Elvis Moyer appeals the district court's order granting summary judgment to the Defendant in this Title VII action alleging race discrimination. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Moyer v. Smurfit-Stone Container Corp., No. CA-00-581-1 (M.D.N.C. filed Nov. 21, 2002, entered Nov. 22, 2002). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GEORGE ELVIS MOYER,	)	
	)	
Plaintiff,	)	
	)	
V.	)	1:00CV00581
	)	
SMURFIT-STONE CONTAINER CORPORATION,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Osteen, District Judge

This matter is before the court on Defendant Smurfit-Stone Corporation's Motion for Summary Judgment, Plaintiff George Elvis Moyer's Motion Contesting the Affidavit of Jim Seel, and Plaintiff's Motion for Summary Judgment. For the reasons set forth herein, Defendant's Motion for Summary Judgment will be granted. Plaintiff Motion Contesting the Affidavit of Jim Seel and Plaintiff's Motion for Summary Judgment will be denied.

App. 4

(Foot notes)

Plaintiff has filed two Motions, styled "Plaintiff Motion and Memorandum Contesting the Affidavit of Jim Seal" [43] and "Plaintiff Motion Contesting Affidavit of Jim Seal" [44]. The affiant that Plaintiff refers to spells his name "Seel,' not 'Seal.' As both motions represent the pro se Plaintiff's pleas to strike the affidavit of Jim Seel, this court will consider the two Motions together as Plaintiff's Motion Contesting the Affidavit of Jim Seel {43}, and sa Memorandum in Support of Plaintiff's Motion Contesting the Affidavit of Jim Seel [44].

I. INTRODUCTION

Plaintiff George Elvis Moyer, acting pro se, initiated this action against his employer, Defendant Smurfit-Stone Corporation ('Smurfit"), on June 14, 2000, asserting violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. - 2000e, et seq. Plaintiff, who is black, claims that Smurfit discriminated against him by failing to promote him to a position which was instead filled by a white man. Defendant asserts that Plaintiff's claim lacks merit and moves for summary judgment. Likewise, Plaintiff asserts that Defendant has raised no viable defense and moves for summary judgment.

_____ (Foot notes)

Early in this proceeding, Defendant urged that the court had no jurisdiction to hear this litigation for Plaintiff's failure to timely file the action. The court ruled on that contention in this order of August 1, 2000. Armed with what it contends is additional evidence, Defendant again raises the same objection. After review of the additional evidence, the court will not depart from the original order and this motion is denied.

On September 30, 1999, Plaintiff, acting pro se, filed a complaint against Smurfit-Stone Corp. (captioned George elvis Moyer v. Smurfit-Stone Container Company, No. 1:99CV00856), generally alleging that Smurfit had racially discriminated against Plaintiff. Recognizing the extreme vagueness of the complaint, the court granted Defendant's motion to dismiss the complaint without prejudice and allowed Plaintiff to refile a complaint that more fully stated a claim.

II. FACTS

Plaintiff George E. Moyer began working for Smurfit-Stone Corporation at its East Market Street, Greensboro, North Carolina, facility in October 1987, in the finising department. He transferred to the cutting department in January 1998.

During all revant periods, the Smurfit plant was unionized, and Plaintiff was a union member. The union agreement between Smurfit-Stone and the Graphic Communication Union, Local 465, set out procedures by which certain jobs are made available for bid. It defines lines of progression within various departments and job classifications. There is an internal grievance procedure for alleged violations of the union agreement.

In June 1997, Plaintiff bid on and was awarded the position of sheeter in the printing department. The printing department is Smurfit-Stone highest-paid department, and the sheeter is the bottom job classification in that department. The line of progression with in the printing department is: sheeter, feeder operator, second pressman, and first pressman. In August 1997, Plaintiff was promoted to feeder operator. Within the feeder operator classification, there are levels of progression, beginning at feeder operator IP-1 where Plaintiff started.

On February 16, 1998, Smurfit hired Kevin Wells to the position of second pressman in the printing department.

Wells, a white man, had previously been employed at another Smurfit plant and had experience on printing presses similar to those used at the East Market Street plant. Before being hired, Wells worked at the plant as an employee of a temporary agency and completed a 400-hour probationary period.

Plaintiff had applied for promotion to feeder operator IP-2 and was denied that promotion on February 13, 1998. Then he was promoted to feeder operator IP-2 in March 1998.

After the hiring of Wells, Plaintiff initiated an internal union grievance, asserting that Smurfit- improperly hired Wells, rather than him, for the second press position. When that grievance was decided adversely, Plaintiff initiated an Equal Employment Opportunity Commission (EEOC) action, alleging racial discrimination under Title VII of the Civil Rights Act of 1964. The EEOC did not grant relief and issued Plaintiff a right -to-sue letter dated June 30, 1999.

III. DISCUSSION

A. Standard of Review

Summary judgment is appropriate where an examination of the verified pleadings, affidavits and others proper discovery materials before the court demonstrates that there is no genuine issue of material fact, thus entitling the moving party to judgment as a matter of law. See Fed. R. Civ. Proc. 56(c); Celotex Corp. v. Catrett, 477 U. S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). Wheresuch evidence could lead to a reasonable juror to find for the nonmoving, a genuine issue Of material fact exists and summary judgment may not be granted. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U. S. 574, 106 S. Ct. 1348 (1986). The basic question in a summary judgment inquiry is whether the evidence 'is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1986). Where the nonmoving party fails to make a sufficient showing to establish an essential element

of its case, summary judgment is proper because a "complete failure of proof' on an essential element renders all other facts immaterial. Celotex, 477 U.S. at 322-23, 106 S. Ct. at 2552.

B. Analysis

Plaintiff asserts that Defendant discriminated against him on the basis of his race in violation of Title VII of the Civil Rights Act of 1984, 42 U.S.C. - 2000e, et seq., by failing to promote Plaintiff to the position filled by Wells. Defendant responds that Plaintiff has failed to establish a prima facie Case of discrimination because Plaintiff did not apply for the position, was not qualified for the position, and has failed to show that Defendant discriminated in hiring Wells.

To survive summary judgement, Plaintiff may satisfy either of two tests. First, Plaintiff may present direct evidence that race was a determining factor in Defendant's employment decision. See Equal Opportunity Comm'n v. Northwest Structural Components, Inc., 822 F. Supp. 1218, 1219 (M.D.N.C. 1983). Second, where Plaintiff is unable to present direct evidence of discrimination, Plaintiff may meet his burden using circumstantial evidence, following the McDonnell Douglas burden shifting schene. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817 (1973). Under this schene, Plaintiff must make an initial evidentiary showing demonstrating a prima facia case of discrimination failure to promote. See id. If established, the prima facie case then creates an inference of discriminatory actions by Defendant, shifting the burden to Defendant to "articulate some legitimate, nondiscriminatory reason" for the action. See id. If Defendant meets this burden, Plaintiff must then be given an opportunity to show that Defendant's stated reasons are pretextual, serving only as a "coverup" for racial discrimination. See 411 U.S. at 804-05, 93 S. Ct. at 1825-26.

C. Admissibility of Seel Affidavit

Plaintiff contests the admission of the Affidavit of Smurfit's plant manager, Jim Seel. T address the merits of the summary judgment claims, the court must first determine whether the proffered evidence may be considered. Federal Rule of Civil Procedure 56(e) requires that affidavits made in support of summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Although Plaintiff contests the fairness and accuracy Seel's affidavit, he does not address the requirements of Rule 56(e), other than to offer unsupported and conclusory allegations that the affidavit contains hearsay. Finding no reason under Rule 56(e) to strike the Seel affidavit, Plaintiff's Motion Contesting the Affidavit of Jim Seel will be denied.

D. Defendant's Motion for Summary Judgment

The complaint asserts a single claim of failing to promote Plaintiff to a position filled by a white employee. To establish a prima facie case of discriminatory failure to promote, Plaintiff must demonstrate that: 1) Plaintiff is a member of a protected class; 2)Plaintiff was qualified for the position in question; 3) Plaintiff was qualified for the position in question; and 4) Plaintiff was rejected under circumstances giving rise to an inference of unlawful discrimination. See Carter v. Ball, 33 F. 3d 450, 458 (4th Cir. *1994).*

While Plaintiff, who is black, qualifies as a member of a protected class, satisfying the first element of the Carter test, he fails to satisfy the second element. It is undisputed that Plaintiff never applied or bid for the second pressman position eventually filled by Kevin Wells. Under the union agreement, Plaintiff had no entitlement to apply or bid for the position in question. Under the union agreement Smurfit was not required to and did not list the position for Plaintiff to bid on. (Moyer Dep. Ex. 10.) Only positions at the

"bottom job classification of a line of progression or in a job classification not in a line of progression" were required to be made available for plant employee to bid on. (Id. At 20-21.) A second pressman position is not an entry-level position. In the printing department, sheeter is the bottom job classification, and second pressman is higher in the line of progression. (Id. At 53.) Thus, Smurfit had no duty to post the second pressman job internally.

Plaintiff alleges that there is no entry-level-level position or bottom job classification in the printing department. In support of that allegation, Plaintiff tendered the affidavit of Elder Lewis Banks, which makes the assertion that Smurfit was required by the union agreement to post the second pressman position for bid. Such conclusory assertions offered by Plaintiff are insufficient to raise genuine issues of material fact in the face of the plain language of the union agreement. Thus, Plaintiff has failed to offer competent evidence on the second essential element of the Carter test.

Having determined Plaintiff's lack of evidence on the second essential Carter element, it is unnecessary for this court to determine whether Plaintiff has satisfied the third and fourth element. The court does, however, note that at the time the second pressman position was filled, Plaintiff had only six months of experience as a feeder operator IP-1 compared to over one year of experience for wells. The union agreement contemplates a 30- month progression from feeder operator to second pressman. (Moyer Dep Ex. 10 at 49-50.) As to the fourth Carter element, Smurfit-Stone offered uncontradicted evidence that it offered the second pressman position to two black men (both of whom failed drug tests) before offering the position to Wells. Several other Smurfit printing department feeder operators had more seniority or relevant experience than Plaintiff at the time Wells was hired.

As discussed above, Plaintiff has failed to

demonstrate at least one of the four essential Carter prima facie elements of his discriminatory failure to promote claim. The court will grant Defendant's Motion for Summary Judgment.

E. Plaintiff's Motion for Summary Judgment

The granting of summary judgment for Defendant necessarily moots Plaintiff's summary judgment motion.

IV. CONCLUSION

For the reasons stated herein, the court will grant Defendant's Motion for Summary Judgment. Plaintiff's Motion Contesting the Affidavit of Jim Seel and Plaintiff's Motion for Summary Judgment will be denied. Defendant's Motion to Strike Plaintiff's Pre-Trial Disclosures and Plaintiff's Motion Requesting Court to Accept Amended Trial Brief will be denied as moot.

A judgment in accordance with this memorandum opinion shall be filed contemporaneously herewith.

This the 21 day of November 2002.

United States District Judge
William L. Osteen

Section 9. Seniority Lists.

(a) When an employee acquires seniority, his name shall be placed on the seniority list in the order of the hiring date.
(b) The Company and the Union have previously cooperated in drawing up local plant seniority lists which have been posted in suitable locations within each of the several plans. An up-to-date seniority list will be posted from time to time, and any employees appearing on such revised seniority lists who did not appear on the previous list, must file any objections they may have said revised lists within two (2) weeks after they are posted. Otherwise they will be considered as true lists.

Section10. Job Bidding Procedure.

(a) If at any time there is a permanent vacancy to be filled in the bottom job classification of a line of progression or in a job classification not in a line of progression, such job shall be posted for bid for a period of forty-eight (48) hours. Monday through Friday.
(b) During such time any employee who desires to be considered for such posted job classification, shall bid therefore by signing the required forms.
(c) Until a permanent assignment is made, such job may be filled by the Company on a temporary basis.
(d) Employees bidding for the posted job will be reviewed and such job will be filled on the basis on seniority consistent with Section 3. of this Article.
(e) In the event that it is determined that none of the bidders have the necessary fitness and ability to satisfactorily do the required work, the Company is free to otherwise fill such job opening.
(f) Employee may bid on a job paying a higher rate than the rate of his or her assigned classification without

restriction, however, no employee will be permitted to bid on a job classification carrying the same rate as his or her job classification until such employee shall have at least six (6) months seniority, after which, such employee may bid laterally no more than once in any six (6) months period.

Agreement

by and between
Container Corporation of America
an affiliate of
Jefferson Smurfit Corporation
And the
Graphic Communications Union
Local 465-S

November 15, 1994
November 15, 1999

Section 9. Seniority Lists.

(a) When an employee acquires seniority, his name shall be placed on the seniority list in the order of the hiring date.
(b) The Company and the Union have previously cooperated in drawing up local plant seniority lists which have been posted in suitable locations within each of the several plans. An up-to-date seniority list will be posted from time to time, and any employees appearing on such revised seniority lists who did not appear on the previous list, must file any objections they may have said revised lists within two (2) weeks after they are posted. Otherwise they will be considered as true lists.

Section10. Job Bidding Procedure.

(a) If at any time there is a permanent vacancy to be filled in the bottom job classification of a line of progression or in a job classification not in a line of progression, such job shall be posted for bid for a period of forty-eight (48) hours. Monday through Friday.

(b) During such time any employee who desires to be considered for such posted job classification, shall bid therefore by signing the required forms.

(c) Until a permanent assignment is made, such job may be filled by the Company on a temporary basis.

(d) Employees bidding for the posted job will be reviewed and such job will be filled on the basis on seniority consistent with Section 3. of this Article.

(e) In the event that it is determined that none of the bidders have the necessary fitness and ability to satisfactorily do the required work, the Company is free to otherwise fill such job opening.

(f) Employee may bid on a job paying a higher rate than the rate of his or her assigned classification without restriction, however, no employee will be permitted to bid on a job classification carrying the same rate as his or her job classification until such employee shall have at least six (6) months seniority, after which, such employee may did laterally no more than once in any six (6) months period. An employee may be permitted to bid on lower rated jobs in a line of progression where the rate of the highest job classification in the employee's present line of progression. In addition, an employee may be permitted to bid on lower rated jobs when it has been determined that his or her condition prevents the satisfactory performance of the duties of his or her present job.

(g) If an employee is absent for justifiable cause during a job posting period, a bid may be filed on his or her behalf by

a Union steward or officer, if such Union steward or officer has been authorized to do so by the employee. Such employee will be considered with other bidders provided he or she returns to work within two (2) weeks of the date of the posting.

(h) The Company does agree to allow employees being paid equal to or less than the entry level rate of the Shipping and Process Information Departments to bid into those departments when openings occur.

ADVANCEMENT FOR EMPLOYEES UNDER PROGRESSION TRAINING

Employees advancing to those jobs on the wage scale indicating a progression training period will receive, upon selection and assignment to the new position, and immediate increase plus subsequent increases in their hourly base rate according to the schedule noted below. Increase in hourly base rate, through the progression training period, will be based on satisfactory progress. Management may elect, if performance warrants, to accelerate the incremental adjustments to the employees hourly rate.

PRINTING DEPARTMENT

Second Press Operator to Press Operator
Two (2) year training progression period.
An immediate increase in the hourly base rate equal to one-fifth (1/5) of the difference between the hourly base rate for Press Operator and Second Press Operator. At six (6) month subsequent intervals, if performance merits, an increase to the hourly base rate in equal amounts.

Feeder-Operator to Second Press Operator
Two and one half (2 ½) year training progression period.
An immediate increase in the hourly base rate equal to one-sixth (1/6) of the difference between the hourly base rate for Feeder-Operator and Second Press Operator. At six (6) month subsequent intervals, if performance merits an increase to the hourly base rate in equal amounts.

Servicer to Feeder-Operator
Two an one half (2 ½) year training progression period.
An immediate increase in the hourly base rate equal to one-sixth (1/6) of the difference between the hourly base rate for Servicer and Feeder-Operator. At six (6) month subsequent intervals, if performance merits, an increase to the hourly base rate in equal amounts.

CUTTING DEPARTMENT

PrePress Service Person to Press Operator
Two and one half (2 ½) year training progression period.
An immediate increase in the hourly base rate equal to one-sixth (1/6) of the difference between the hourly base rate for PrePress Service Person and Press Operator. At six (6) month subsequent intervals, if performance merits, an increase to the hourly base rate in equal amounts.

PRINTING DEPARTMENT PROGRESSION

Press Operator
2nd Press Operator
Feeder Operator
Servicer
Sheeter

Each level subject to test of fitness, ability and seniority.

CUTTING DEPARTMENT PROGRESSION

Press Operator
Pre-Press Servicer
Baler

Each level subject to test of fitness, ability, and seniority.

FINISHING DEPARTMENT PROGRESSION

Finishing Specialists
Operator
Servicer
Bundler
Casepacker
Feeder
Catcher

Each level subject to test of fitness, ability and seniority.

MAINTENANCE DEPARTMENT PROGRESSION

Electro Mechanic
Electrical Mechanic

SHIPPING DEPARTMENT PROGRESSION

Warehouse Person
Checker
Handler

Each level subject to test of fitness, ability and seniority.

Sen. List	5/27/98 3:36 PM			
Name	Date Hired	Yrs of Ser.	Class.	Class. Date
J. W. Means	7/24/72	25	Feeder Op.	10/20/76
C. E. Hall	1/22/73	25	2nd Press Op.	1/15/86
V. M. Jeffries	3/7/77	21	2nd Press Op. IP4	6/16/97
S. B. Cunnigham	5/16/77	21	2nd Press Op. IP2	6/1/97
Eddie Justice	10/1/87	10	2nd Press Op.	6/16/97
G. E. Moyer	10/2/87	10	Feeder Op. IP2	8/18/97
P. E. Jones	10/31/91	6	2nd Press Op. IP2	7/28/97
E. L. House	4/5/95	3	2nd Press Op. IP2	7/28/97
W. D. Harris	4/28/96	2	Feeder Op. IP2	8/18/97
K. B. Wells	2/16/98	0	2nd Press Op. IP3	2/16/98
C. E. Hood	3/29/76	22	2nd Press Op	12/23/96

App.18

Jefferson Smurfit Corporation
Interoffice Correspondence

DATE: October 2, 1996
TO: John Means OFFICE: Greensboro
FROM: Randy Heam OFFICE: Greensboro

SUBJECT: REQUEST TO BE DISQUALIFIED AS 1ST PRESS OPERATOR

The following is a response to our meeting this morning concerning your request to be disqualified as a 1st press operator and given an opportunity to show fitness and ability as a 2nd press operator.

I have discussed your request with both Cindi Straughn and Jim Seel as I promised. The 2nd press operator position is a developmental classification for 1st press operator. The expectations of the 2nd press operator are almost identical to those of 1st press operator. This classification also requires full knowledge of and ability to use all systems of the Komori. In a 1st press operator's absence, the 2nd press operator must be capable of running the press. It is for these reasons that the company treat disqualification of a 1st press operator as disqualification on both 1st and 2nd press operator positions. Because of different expectations of the utility person, we will allow an opportunity to show fitness and ability for that position with the clear understanding that the utility classification is a very difficult and demanding job that will demand a lot of hard work to successfully complete. Disqualification to utility will also freeze your progression at that level.

Please let me know of your decision so that we can begin your training and demonstrations of fitness and ability at your desired classification.

10/4/96 7:42 AM Randy Heam, Plant Manager

State of North Carolina; Case Name (Moyer Vs. Jefferson S)
City/County of Reidsville/Rockingham; Case#145990117

AFFIDAVIT

I, George E. Moyer being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 41 years of age, my gender is Male and my racial identity is Black. I reside at 1444 Wolf Island Road, City of Reidsville, County of Rockingham, State of North Carolina, Zip Code 27320. My telephone number is (336) 634-1827.

My statement concerns Jefferson Smurfit Corporation which is located at 2600 East Market Street, in Greensboro, NC 27401. My job classification is Utility Servicer.

On October 2, 1987, I was hired by Jim Malloy, then General Manager. Respondent employs the requisite number of employees.

I am currently employed as a Utility Servicer earning about $12.00 per hour. There are three shifts. I rotate shifts. The positions in order of promotions are Sheeter Operator, utility Servicer (changed to Feeder Operator), Second Pressman, and First Pressman.

Around February 16, 1998, there was a position available as Second Pressman, with a salary around $15.00 per hour. The position was not posted. I did not submit an application. When an opening is available, the most senior person gets

promoted. I was the most senior person. The union contract says that a person is selected based on fitness and ability. I filed an internal grievance. I was informed that the company needed someone in the position immediately. I was told that Kevin Wells, the selectee, was qualified for the position. I was also told that I was not selected because of fitness and ability. I can only think of two occasions. Once someone was looking for me and I was in the bathroom. Another time I was on the phone during my break.

Around February 16, 1998 Kevin Wells, White male, was hired by Randy Hearns, Plant Manager, from outside the company to the position of Second Pressman. Kevin had no experience. I was the most senior person and should have been selected for the position. I was qualified because I had the training and was doing Second Pressman work approximately 6 hours each day.

Not only was I discriminated against, but other Black employees were denied promotions in favor of White employees. Around September, 1998, Kevin Wells got promoted to First Pressman over Eric Morehead-House, Sandra Cunningham, and Philina Jones, all Second Pressmen. W. D. Harris is a Utility Servicer. R. E. Cathey, Rev. Lewis H. Banks, and Teddy Johnson are Sheeter Operators. Charles Hood and Charles Hall are Second Pressmen. They were all denied promotions in favor of White employees. John means was demoted from first Pressman to Utility Servicer.

I got about a $1.00 raise about three or four months ago. Utility Servicer has 3 levels within it. I am either at level 2 or 3.

I believe I was discriminated against and denied a promotion in violation of Title VII of the Civil Rights Act of 1964, as amended, because of my race, Black.

I have read and had an opportunity to correct this Affidavit consisting of two (2) typed pages and swear that these facts are true and correct to the best of my knowledge and belief.

George E. Moyer

Subscribed and sworn to before me
this third day of December, 1998

Employment Opportunity Commission
DISMISSAL AND NOTICE OF RIGHTS

TO:		FROM:	
	George Moyer 1444 Wolf Island Road Reidsville, NC 27320		E.E.O.C. Greensboro Local Office 801 Summit Avenue Greensboro, NC 27405-7813

Charge Number	EEOC Representative	Telephone Number
145990117	Patricia B. Fuller	(910) 333-5174

The EEOC is closing its file on this charge for the following reason:
The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance

with the statuses. No finding is made as to any other issues that might be construed as having been raised by this charge.

-NOTICE OF SUIT RIGHTS-

(See the additional information attached to this form) Title VII, the Americans with Disabilities Act, and/or the Age Discrimination In Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent (s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that back pay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On Behalf of the Commission

_____ _____

Patricia B. Fuller, Director (Date)

Enclosure (s)

cc: JEFFERSON SMURFIT CORPORATION
2600 EAST MARKET STREET
GREENSBORO, NC 27401

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GEORGE ELVIS MOYER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:00CV00581
	)	
SMURFIT-STONE CONTAINER CORPORATION,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION and ORDER

OSTEEN, District Judge

On September 30, 1999, George Elvis Moyer, acting pro se, filed a complaint against his employer, Smurfit-Stone Corporation (Smurfit-Stone).[1] The brief, hand written complaint generally alleged that Smurfit-Stone had discriminated against Plaintiff because of his race. Because the complaint was extremely vague and provided little information about the circumstances surrounding the alleged discriminatory actions, the court granted Defendant's motion to dismiss the complaint, without prejudice, and allowed Plaintiff the opportunity to refile a complaint that compiled with the Federal Rules of Civil Procedure.

---

[1]The case was captioned George Elvis Moyer v. Smurfit-Stone Container Company," No. 1:99CV856.
Rules of Civil Procedure, the rules are not enforced strictly against them. See Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972). It is with this recognition of liberal

construction that the court must examine Plaintiff's pro se complaint.

Smurfit-Stone contends that Plaintiff failed to allege the first element of his discrimination case because the complaint does not state that he is a member of a protected group. Although Moyer fails to specifically state that he is a member of a protected class, a review of his allegations makes it clear that he is black. After detailing that Wells received the promotion to Second Pressman over Plaintiff, despite Plaintiff's higher levels of education and experience, the complaint states that in addition to violating his own rights, "Smurfit-Stone's White management discriminated against seven other Black Employees by promoting Kevin Wells, a white employee." (Compl. At 3) (emphasis added). Even the application of an elementary level of reading comprehension reveals that Moyer is unmistakably black. With or without the liberal construction afforded pro se plaintiffs, Moyer has sufficiently alleged the first element of his Title VII claim.

Defendant next contends that the complaint fails to allege that Moyer applied for the position about which he complains. Again, although the pleading does not explicitly state that Plaintiff attempted to procure the position of Second Pressman, the context of the allegations suggests that he did apply for the job. Plaintiff states that prior to Wells' appointment to the position, Moyer "had previous [sic] been qualified for the job" and that he " had been doing the job daily for approximately six hours each day." (Compl, at 2.) Under the liberal construction the court must utilize in analyzing his complaint, Plaintiff satisfied the second element of his claim for discrimination. Additionaly, these same allegations satisfy the third element of Plaintiff's claim because they declare that he was qualified for the position of Second Pressman.

Finally, despite Defendant's contention to the contrary,

Plaintiff's complaint clearly satisfies the fourth and final element of his claim. To satisfy this element, Moyer "need only show that the position was filled by a white applicant." Carter, 33 F.3d at 458. Throughout the complaint, Moyer makes it clear that Kevin Wells is white. Therefore, Plaintiff has sufficiently pled all four of the elements for a successful discrimination claim under Title VII and dismissal pursuant to Rule 12 (b) (6) is improper.

LAST PAGE

Mailed on or after June 30, 1999, which the court assumes for purposes of this motion, Rule 6 (e) provides the presumption that Plaintiff did not receive it until at least July 3, 1999, three days the date provided in the letter. In such case, his September 30, 1999, complaint was filed within 90 days of receipt of the letter and the court therefore properly can exercise jurisdiction over the case. The court will deny Defendant's motion to dismiss over the case. The court witll deny Defendant's motion to dismiss under Rule 12 (b) (1).

In denying Smurfit-Stone's motion, the court recognizes that the date of Plaintiff's receipt of his right-to-sue- letter is uncertain. Further inquiry and evidence likely will reveal the actual date of receipt. Accordingly, the court will allow Defendant the opportunity to revisit the issue of subject matter jurisdiction following discovery.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (4) is denied.

IT IS FURTHER ORDERED that Defendant's motion (6) to dismiss the amended complaint is granted.

This the 1 day of August 2001.

United States District Judge
William L. Osteen

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GEORGE ELVIS MOYER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:00CV00581
	)	
SMURFIT-STONE CONTAINER CORPORATION,	)	
	)	
Defendant.	)	

JUDGMENT

OSTEEN, District Judge

For the reasons stated in the memorandum opinion filed contemporaneously herewith,

IT IS ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment [37] is granted.

IT IS FURTHER ORDERED that Plaintiff's Motion Contesting the Affidavit of Jim Seel [43] and Plaintiff's Motion for Summary Judgment [45] are denied.

IT IS FURTHER ORDERED that Defendant's Motion to Strike Plaintiff's Pre-Trial Disclosures [57] and Plaintiff's Motion Requesting Court to Accept Amended Trial Brief [59] are denied as moot.

This the 21 day of November 2002.

United States District Judge
William L. Osteen

IN THE
SUPREME COURT OF THE UNITED STATES

George Elvis Moyer - PETITIONER

v.

Smurfit-Stone Container Corporation - RESPONDENTS

PROOF OF SERVICE

I, George E. Moyer, do swear or declare that, on this date, August 2, 2003, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that parties counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them with first-class
postage prepaid.

The names and addresses of those served are as follows:
Lawyer:. Fred T. Hamlet, 300 North Green Street, First Union Tower-Suite 1870, Greensboro, N.C. 27401.

I declare under penalty of perjury that the foregoing is true and correct

Executed again on October 6, 2003 George E. Moyer
Pro se